

FRONT LINE

Report

January 2001

OFFICE OF MISSOURI ATTORNEY GENERAL

Vol. 8, No. 1

Law enforcement statewide backs .08

MORE THAN 200 Missouri police chiefs and sheriffs have added their names to the growing list of law enforcement agencies supporting Attorney General Jay Nixon's proposal for a "Straight .08" law. His proposal would change DWI laws to read .08 wherever the law says .10.

Nixon said attempts often are made to divide law enforcement, MADD and other supporters of the bill by proposing compromises and complicating issues.

"Research clearly demonstrates that all drivers are impaired when their blood alcohol is above .08," Nixon said. We have all seen enough unnecessary injury, death and heartbreak from drunk driving."

The legislative incentive to pass the changes will be heightened by new federal laws that will phase in a withholding of federal highway funds for states that do not

SEE STRAIGHT .08, Page 6



RACIAL PROFILING COMMISSION Chairman Jim Nunn discusses objectives during a Dec. 11 meeting in Kansas City. From left clockwise are Kansas City Police Chief Richard Easley, Eastern District ACLU Director Matt LeMieux, and Assistant Attorney General Vanessa Ellis.

Data due March 1
Racial profiling data collected for traffic stops are due to the AG's Office by **March 1** as required by law. Page 2 contains more information on the racial profiling law and commission.

HIGH-TECH CRIME UNIT



Director
Dale Youngs
Has been the chief prosecutor of computer fraud-related cases since joining the AG's Office in 1996.



Jim Stegeman
Is a 22-year veteran of the St. Louis Police Department as a lead evidence investigator and head of computer crime unit.



Chris Pickering
Former evidence tech in a Kansas City-area police department.



David Finch
Computer network and security specialist.

AG's unit provides high-tech assistance

SINCE ITS INCEPTION last year, the High Tech and Computer Crime Unit has assisted prosecuting attorneys, police departments and sheriffs in nearly 20 Missouri counties in cases ranging from credit-card fraud and e-mail harassment to promoting child pornography and arson.

When the Raytown Police Department pursued a suspect for stealing check numbers and reproducing them on a computer check printing program, the

SEE HIGH TECH, Page 6

Racial profiling group will help implement law



Commission members share a lighter moment. From left are Chairman Jim Nunn, Attorney General Nixon, Assistant Attorney General James Klahr and defense attorney Elana Franco.

ATTORNEY GENERAL Jay Nixon has established a Racial Profiling Commission to help the AG's Office implement the new law.

The commission, which includes police chiefs and association and union representatives, has met twice to discuss issues such as law implementation and local agency costs.

"The commission's input has been very helpful as we work toward producing a statewide report that provides a fair and accurate picture of traffic stops in Missouri," Nixon said.

"I look forward to future meetings with the commission as we prepare to analyze this data."

Data collection forms due March 1, racial profiling policies requested

Data collection forms

Racial profiling data collected for traffic stops conducted between Aug. 28 and Dec. 31, 2000, are due to the AG's Office by March 1.

The Annual Report forms and instructions were published in the August 2000 Front Line. They also are available at AGOnline at <www.moago.org/traffic.htm>.

Questions about how to complete these forms can be directed to assistant attorneys general James Klahr at 573-751-1800 or Tim Anderson at 573-751-1508.

Policies against racial profiling

Law enforcement agencies are reminded to submit a copy of their policy against racial profiling.

This policy is required by SB 1053, which is posted on AGOnline at <www.moago.org/traffic.htm>.

The AG's Office plans to include the number of policies it receives in the annual report that will be submitted to the General Assembly. More than 460 agencies already have sent their policies to the office.

Submit a copy to James Klahr, Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102.

Thanks for your continued cooperation in helping our office successfully carry out this new law.

COMMISSION MEMBERS

- **Ken Conlee**, chief of Lee's Summit Police Department
- **Russ Craven**, president of Missouri Union of Law Enforcement, Local No. 57, AFL-CIO-IUPA
- **Elana M. Franco**, Kansas City attorney
- **Joan Glover**, president of Ethical Society, St. Louis Chapter of National Black Police Officers Association
- **Steven Goins**, UMC law student
- **Lee Goodman**, St. Louis attorney
- **Charles Heiss**, sheriff of Johnson County
- **Daniel Hernandez**, retired officer of Kansas City Police Department
- **Matt LeMieux**, director of ACLU of Eastern District
- **Thomas Mayer**, president of Fraternal Order of Police
- **Rev. George McFoulon**, pastor of Hopewell Baptist Church in St. Louis
- **Ron Neubauer**, chief of St. Peters Police Department
- **Chairman Jim Nunn**, retired colonel in KC Police Department and director of Move Up in Kansas City
- **Jamala Rogers**, co-chair of Coalition Against Police Crimes and Repression
- **Norman Seay**, director of Office of Equal Opportunity, University of Missouri-St. Louis
- **Marco Tapia**, director of Missouri Deputy Sheriffs' Association
- **Tyrone Thompson**, chief of Pagedale Police Department
- **Mike Woods**, sergeant in State Highway Patrol



Front Line Report is published on a periodic basis by the Missouri Attorney General's Office, and is distributed to law enforcement officials throughout the state.

■ **Attorney General:** Jeremiah W. (Jay) Nixon

■ **Editor:** Ted Bruce, Deputy Chief Counsel for the Public Safety Division

■ **Production:** Peggy Davis, Communications Office Attorney General's Office
P.O. Box 899, Jefferson City, MO 65102

UPDATE: CASE LAW

MISSOURI SUPREME COURT

State v. Earl Ringo, Jr.

No. 81892

Mo.banc, Oct. 31, 2000

The trial court did not err in denying a motion to suppress statements on the basis that a detective failed to inform the defendant of the presence of an attorney at the police station. The defendant was informed of his Miranda rights, waived them, and eventually confessed to the crimes. There was no evidence of coercion.

EASTERN DISTRICT

State v. Sherman Griffin

No. 76902

Mo. App., E.D., Oct. 10, 2000

The defendant's conviction did not constitute double jeopardy when a trial court accepted the jury's verdict of not guilty of first-degree robbery and armed criminal action but failed to read a verdict finding the defendant guilty of second-degree robbery before releasing the jury. The initial verdicts received by the trial court never became binding because the verdicts were rejected before the jury was discharged.

State v. John Wright

No. 76692

Mo. App., E.D., Oct. 10, 2000

The trial court did not err in denying the defendant's motion to suppress photographs taken during a warrantless entry into his apartment. The officers had reason to believe the defendant was in the apartment because he lived there, the crime had occurred there just hours before, the victim had escaped from the apartment just over an hour before, and police thought they heard a commotion in it. If they left the apartment to get a warrant, there was a likelihood the defendant would destroy the crime

evidence or escape. If the officers are lawfully on the premises, they can seize an item in plain view if they have probable cause to believe the object is connected to the crimes.

State v. LeRoy Craig

No. 77054

Mo. App., E.D., Oct. 31, 2000

The trial court erred in refusing to instruct on involuntary manslaughter because there was a basis for the jury to acquit the defendant of second-degree murder and to convict him of voluntary manslaughter. There was a basis for a reasonable jury to have found that the defendant was reckless because he responded to the threat of a knife by inflicting ill-aimed blows with an iron bar on the victim. The court reversed and remanded the case.

State v. Gerald Edwards

No. 77103

Mo. App., E.D., Oct. 31, 2000

The defendant challenged the admission of oral statements given to police without a suppression hearing outside the presence of jurors, the sufficiency of evidence, and improper comments made by the prosecutor during closing argument.

The appeals court remanded to the trial court for an evidentiary hearing on the voluntariness of Gerald Edwards' statements, saying the trial court erred in not holding a suppression hearing outside the presence of the jury.

The appeals court did rule there was sufficient evidence to convict him under a theory of accomplice liability for second-degree murder and first-degree assault, assuming his statements are voluntary. The court also ruled there was no plain error found as to the prosecutor's comments during closing argument.

State v. Martiez Davis

No. 76691

Mo. App., E.D., Oct. 17, 2000

The trial court did not err in excluding alleged expert testimony on interrogation techniques, false confessions and coercive persuasion. The court held that the offer of proof invaded the jury's province to make credibility determinations. The jury heard testimony about the conditions and length of the defendant's interrogation, the receipt and waiver of Miranda rights, content of police questions and defendant's statements. It was reasonable for the trial court to conclude that the jury could decide the issue of the statement's reliability using its common knowledge.

WESTERN DISTRICT

Vincent Karpierz, Appellant, v.**Chief Edward D. Easley**

No. 58364

Mo. App., W.D., Nov. 14, 2000

The appellant sued to recover money seized by Kansas City police. The court ruled that although a federal agency later participated in executing the search warrant, the police investigated and seized the contraband under the Criminal Activity Forfeiture Act.

The court ruled that the state law enforcement agency violated CAFA when it transferred the property to the federal agency for forfeiture without allowing a circuit judge and prosecuting attorney to review and approve it.

Under CAFA, the fact that a participating officer had dual authority with the federal agency in no way affected the operation of CAFA. The court remanded the case to determine whether the person from whom the property was seized had the remedy against the police for return of the contraband.

UPDATE: CASE LAW**State v. Stanley E. Smith**

No. 57697

Mo. App., W.D., Nov. 14, 2000

The court reversed the defendant's conviction of possession, manufacture and production of a controlled substance. There was insufficient evidence the defendant had conscious and intentional possession of meth, and that he was aware of the presence and nature of the substance. While evidence strongly suggested the defendant was involved with meth production, there was insufficient evidence of proof beyond a reasonable doubt.

SOUTHERN DISTRICT**State v. Don L. Brockman**

No. 23166

Mo. App., S.D., Oct. 24, 2000

The court reversed the defendant's conviction of manufacturing meth as an accomplice because there was insufficient evidence of his guilt, due to his association with others involved in the crime and his constructive possession of the home and car where meth was found. No contraband was found on the defendant, no lab equipment was found in the home, and the car and minivan could not be traced to the defendant.

State v. Dimitri M. Bell

No. 23415

Mo. App., S.D., Oct. 30, 2000

The court reversed the defendant's felony conviction of interfering with an arrest and ordered the judgment to be a misdemeanor conviction. The state failed to present direct evidence to indicate the underlying arrest. There was insufficient evidence to conclude beyond a reasonable doubt that, when the defendant interfered, the officer was attempting an arrest for a felony under Section 565.081.

Drug checkpoints unconstitutional

IN AN IMPORTANT and surprising ruling, the U.S. Supreme Court on Nov. 28, 2000, held that the use of roadblocks or checkpoints to detect drugs was an unconstitutional seizure in violation of the Fourth Amendment.

By invalidating the use of drug checkpoints by the city of Indianapolis, the Supreme Court questioned the use of a drug interdiction tool that has been effective in Missouri.

In *State v. Damask*, 936 S.W.2d 565 (Mo. banc 1996), the Missouri Supreme Court upheld the use of drug checkpoints that involved setting up warning signs on isolated sections of a highway indicating a drug checkpoint was ahead. The checkpoint, however, was placed at the next exit ramp, which had no services and little local traffic. Officers expected to stop only drivers attempting to avoid the checkpoint.

While the Indianapolis checkpoints were conducted differently, the U.S. Supreme Court's ruling generally prohibits drug-detecting checkpoints. In *Indianapolis v. Edmond*, the court held that highway checkpoints "whose primary purpose was to detect evidence of ordinary criminal wrongdoing" are unconstitutional and suggested that checkpoints are generally lawful only if they relate to "ensuring roadway safety."

The court said it could not "sanction stops justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime."

This decision does not affect DWI checkpoints. The Supreme Court made it clear that sobriety checkpoints are valid because they relate to highway safety. It also restated that license and registration checkpoints are lawful.

"We believe the U.S. Supreme Court intended for its decision to be applied broadly. Agencies planning roadblocks that involve drug interdiction, whether as the primary or secondary goal, should seek legal advice from their counsel."

Attorney General Jay Nixon

The AG's Office has contacted several law enforcement agencies and prosecutors throughout the state, discussing the impact on pending cases where arrests were made during drug checkpoints. This decision jeopardizes evidence seized in those stops.

Officers involved in the stops, however, acted in "good faith" and cannot be held civilly liable. But the Exclusionary Rule applies to exclude evidence obtained in violation of the Constitution regardless of whether the officers were acting in good-faith reliance on the law as set forth in *Damask* at the time they made the stop.

The top court left open the possibility that officers conducting a valid license checkpoint could also actively look for drug trafficking. The court did warn, however, that courts should scrutinize such a scheme to determine the "programmatic purpose." Setting up a drug checkpoint and calling it a "license checkpoint" is unlawful.

The AG's Office acknowledges that there are some fine legal minds who believe the Indianapolis case does not hold that the type of deceptive checkpoints used in *Damask* are necessarily invalid.

The Phelps County sheriff reportedly will continue to conduct *Damask*-type roadblocks. The U. S. Attorney's Office has indicated that these types of roadblocks are not outlawed by the U.S. Supreme Court's decision.

Public officials can register for ethics seminar

THE AG'S OFFICE is sponsoring a free Ethics in Government Conference in February for local elected and appointed public officials in Missouri.

Public officials are faced with important ethical and legal questions every day. To help them understand the law, officials can sign up for one of two seminars on Feb. 7 and 8.

The all-day conference will be held in Jefferson City from 9 a.m. to 4 p.m. in Room 492 of the Truman State Office Building, 301 W. High St.

Registration deadline is **Jan. 20**. Attendance is limited.



TO REGISTER

Call: 573-751-8824 **or**

Click: www.moago.org/ethics.htm

Provide this information for all attendees from your office:

- Name and work phone number of attendees
- Name of agency or office
- Titles of attendees
- Seminar date

Session topics
(same for both days)

- Americans with Disabilities Act
- Bidding/Purchasing
- Budgeting/Use of public funds
- Conflicts & Disclosure/Elections/Ethics
- Employment issues
- Nepotism
- Record keeping
- Sexual harassment
- Sovereign immunity
- Sunshine Law

Scope of inquiry at traffic stops questioned

CONTINUING A TREND limiting officers' investigative authority, the 10th U.S. Circuit Court of Appeals issued an opinion severely curtailing the power of officers to ask questions that could compromise their safety.

While the Aug. 24, 2000, decision in *U.S. v. Holt* is not directly binding because Missouri is not part of the 10th Circuit, the case still is troubling. The 10th Circuit held that an officer could not ask the driver if he had weapons during a routine stop for a seat belt violation.

An Oklahoma trooper had stopped Dennis Holt and noticed he was not wearing a seat belt. Holt sat in the patrol car while the trooper conducted a routine license check. Before the officer had completed a warning ticket, he asked Holt if he had weapons.

AG'S OFFICE RESPONDS TO U.S. v. HOLT

The Attorney General's Office respectfully disagrees with this opinion and believes that sufficient legal precedent exists in Missouri and in opinions from other federal courts to allow Missouri officers to continue to inquire about weapons during a lawful traffic stop. Officers, however, should be ready to articulate their safety concerns.

Holt said he had a loaded pistol behind the passenger seat and consented to a vehicle search.

The 10th Circuit held that the weapons question "was unrelated to

the purpose of the stop" and was improper. The court reached this conclusion even though the question occurred when the officer clearly had the right to detain Holt.

The court held that, without reasonable suspicion, an officer may not ask a question "which would require the detainee to give an incriminatory answer."

The AG's Office believes sufficient concern for safety exists to permit an officer to ask about weapons during a traffic stop. This inquiry is minimally intrusive and increases safety for the officer and the driver by reducing the anxiety and likelihood of overreaction.

The court acknowledged that other federal circuits have allowed similar questions. It also suggested that if a sufficient record were made about the dangers, a different result might occur.



January 2001

FRONT LINE REPORT

HIGH TECH

CONTINUED from Page 1

department sought the expertise of the High Tech Crime Unit.

The unit helped draft a search warrant and then aided in seizing and examining the computer for evidence.

The unit is headed by experienced prosecutor Dale Youngs. He is backed by forensic specialist Jim Stegeman and investigators Chris Pickering and David Finch.

The team helps law enforcement with investigative and legal issues, providing language for search warrant applications, executing search warrants, and securing and analyzing computer and digital evidence.

For assistance or information, call Director Dale Youngs at 816-889-5000.

In October 2000, the unit helped the Clay County Prosecuting Attorney's Office prosecute a Smithville man who sent child pornography and made threats of violence to Massachusetts middle school students. The man was sentenced to 15 years in prison.

The unit also obtained an injunction against the operators of drivelegal.com, a Web site that sells "international driver's licences" as a way to get around suspension or revocation of legitimate licenses.

STRAIGHT .08

CONTINUED from Page 1

have a BAC limit of .08, Nixon said.

The state Department of Transportation said Missouri will lose \$34.8 million annually by 2007 and an increased amount every year thereafter if the proposed law changes are not enacted. Nineteen states and the District of Columbia have .08 laws.

LAW ENFORCEMENT AGENCIES STILL CAN REGISTER STRAIGHT .08 SUPPORT

Agencies should have received a letter asking if they wanted to support efforts to pass the Straight .08 legislation. Agencies can still register their support by writing to James Klahr, Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102, or by e-mailing him at klahrj@moago.org.